Supreme Court, U.S.
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*In The*
*Supreme Court of the United States*
*October Term 1996*

JACK KEVORKIAN,
*Petitioner,*

v

STATE OF MICHIGAN,
*Respondent.*

Appendix to a Writ of Certiorari to
the Michigan Supreme Court

# PETITION FOR WRIT OF CERTIORARI

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36 pp

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No. _____

**In The**
**Supreme Court of the United States**

October Term, 1996

JACK KEVORKIAN, Petitioner,

v.

MICHIGAN, Respondent.

**Appendix to Petition for Writ of Certiorari to the Michigan Supreme Court**

## APPENDIX A

## ORDER OF PERMANENT INJUNCTION

(Circuit Court for the County of Oakland)
(February 5, 1991)

PEOPLE OF THE STATE OF MICHIGAN ex rel OAKLAND COUNTY PROSECUTING ATTORNEY, plaintiff v. JACK KEVORKIAN, defendant. No. 90-390963.

At session of said Court, held in the Courthouse, in the City of Pontiac, County of Oakland, State of Michigan, on February 5, 1991.

PRESENT: HONORABLE ALICE L. GILBERT, Circuit Judge.

This matter having come before the Court on Plaintiff's Complaint for injunctive relief and the Court being fully advised in the premise:

IT IS HEREBY ORDERED that for the reasons set forth in the Court's Opinion of February 5, 1991, Defendant Dr. Jack Kevorkian, his agents, and employees, and those in active convert or participation with him, shall be and hereby are permanently enjoined from: using, employing, administering, offering, or providing any of his "suicide machines", or other similar devices, contrivances, or other modalities or drugs (including nonpresciption drugs) on, or to, any persons seeking to end a human life, or conducting any acts to help a patient commit suicide regardless of the modality employed.

## APPENDIX B

## ORDER

(State of Michigan - Supreme Court)
(April 26, 1996)

PEOPLE OF THE STATE OF MICHIGAN ex rel OAKLAND COUNTY PROSECUTING ATTORNEY, plaintiff-appellee v. JACK KEVORKIAN, defendant-appellant. SC: 103577, COA: 138155, LC: 90-390963-AZ.

On order of the Court, the delayed application for leave to appeal is considered, and it is DENIED, because we are not persuaded that the question presented should be reviewed by this Court.

Levin and Cavanagh, JJ., would grant leave to appeal.

## APPENDIX C

## OPINION

(State of Michigan - Court of Appeals)
( May 12, 1995)

PEOPLE OF THE STATE OF MICHIGAN ex rel OAKLAND COUNTY PROSECUTING ATTORNEY, plaintiff-appellee v. JACK KEVORKIAN, defendant-appellant, and HEMLOCK OF MICHIGAN, Amicus Curiae. No. 138155, LC No. 90-390963-AZ.

Before: Murphy, P.J., and Michael J. Kelly and Seed, JJ.

MURPHY, P.J.

The issue before this Court is whether the trial court erred by permanently enjoining defendant from using or providing "any of his 'suicide machines', or other similar devices, contrivances, or other modalities or drugs (including nonprescription drugs) on, or to, any persons seeking to end a human life, or conducting any acts to help a patient commit suicide regardless of the modality employed." We hold that no error occurred and accordingly affirm the trial court.

On June 4, 1990, defendant helped Janet Adkins commit suicide. On June 6, 1990, plaintiff filed a complaint for injunctive relief and a motion for a temporary restraining order. The temporary restraining order was not granted, but the trial court did issue an order to show cause why a preliminary injunction should not issue. At the conclusion of a hearing on June 8, 1990, at which defendants testified, the trial court issued a preliminary injunction temporarily enjoining defendant from using or providing his suicide machines or other devices or drugs in order to help a person seeking to end a human life.

Trial was held on plaintiff's request for injunctive relief

in January, 1991. Although defendant did not testify at trial, his testimony from the June 8, 1990, hearing was admitted as an exhibit. In addition, a statement prepared by defendant was admitted as an exhibit. Numerous other witnesses also testified.

Defendant admitted that he helped Ms. Adkins commit suicide by means of his "suicide machine," which consists of a frame holding three chemical solutions fed into a common intravenous line controlled by a switch and a timer. Defendant admitted that he inserted the intravenous line needle into Ms. Adkins' arm, but testified that Ms. Adkins activated the switch that turned on the machine and that Ms. Adkins wished to die because she had Alzheimer's disease and feared for the future. He testified that he discussed the matter with Ms. Adkins and her husband. However, he also admitted that he had no clinical training in Alzheimer's disease and was unaware of the progress of the disease in Ms. Adkins or whether modes of treatment were available. He testified that he is certified in anatomic and clinical pathology, that he has been unemployed in medicine since 1982 and living off savings, in part because his actions and theories have always been controversial, and that he has no special training in Alzheimer's disease, geriatric diseases or neurology. He admitted that he would offer the use of his machine in the future in the absence of an injunction preventing him from doing so.

On February 5, 1991, the trial court issued an opinion and order permanently enjoining defendant from using his machine or otherwise assisting in suicide. The court found as fact that defendant's actions in this case occurred as part of a physician-patient relationship, and that his actions must therefore be judged under currently operative standards of medical practice, and not standards which might ensue in the future. The court found that defendant is by education and training a retired pathologist without any experience or knowledge in the fields of internal medicine, geriatric medicine,

psychiatry, neurology, or other areas which might be helpful in diagnosing and managing Alzheimer's disease. The court found that defendant was not professionally qualified to evaluate the physical or emotional status of Ms. Adkins. Moreover, the court found that defendant made no attempt to take a comprehensive medical history, conduct a physical examination, order any tests, assess Ms. Adkins' medical status, or consult with experts. The court found that Ms. Adkins who was 54 years old, was neither imminently terminally ill, nor suffering from pain. After reviewing the videotape interview conducted by defendant with Ms. Adkins and her husband, the court found that she was coherent, responsive to verbal communication, and without any obvious physical or mental impairment. The court noted reports that she had played tennis within days of her death. Likewise, the video tape demonstrated that defendant made no real effort to discover whether Ms. Adkins wished to end her life, relying largely on the statements of her husband and a few limited responses from Ms. Adkins. The court found that defendant appeared to be in a hurry during the videotaped interview. The court found that Alzheimer's disease was not within the province of defendant's speciality, and that his actions did not conform to accepted medical standards. In particular, the court noted in its opinion that defendant had threatened to use his machine again in the future in the absence of an injunction presenting him from doing so.

On appeal, defendant does not challenge any of the trial court's findings of fact. Instead, defendant raises two questions of law.

First, defendant claims that the trial court erred in denying its motion for summary disposition based upon the doctrine of collateral estoppel and res judicata after a district court judge ruled in a related criminal case that assisting suicide is not a crime under the laws of the State of Michigan.

In People v. Hayden, 205 Mich. App. 412, 414-415; 522

NW2d 336 (1994), this Court recently reiterated the rule that dismissal of a prosecution at preliminary examination raises no bar under res judicata or collateral estoppel to a subsequent civil action involving the same facts. Moreover, it is now clear that the district court's dismissal of the criminal charge against defendant was erroneous. People v. Kevorkian, 447 Mich 436; 527 NW2d 714 (1994), cert den sub nom Hobbins v. Kelly, __ U.S. __ (1995). For these reasons, we find no merit to defendant's argument.

Defendant also claims that the trial court lacked jurisdiction to enjoin Dr. Kevorkian from committing a legal act. As indicated above it is now clear that Dr. Kevorkian's claimed legal act was in fact illegal. Kevorkian, supra. Alternatively, defendant argues that even if the actions of defendant were criminal, injunctive relief should not be available in this case. We disagree.

Courts of equity will generally not interfere to prevent the breach of a penal statute except to prevent the continuance of a nuisance affecting health, moral, or safety or to protect a public property right or interest. See Portage Twp. v. Full Salvation Union, 318 Mich 693, 706; 29 NW2d 297 (1947); Muckegon Bldg. & Construction Trades v. Muskegon Area Intermediate Sch. Dist., 130 Mich. App. 420, 429; 343 NW2d 579 (1983). See also 42 Am Jur 2d, Injunctions, § 157, pp 916-918. On the other hand, the mere fact that an act sought to be enjoined is punishable under the criminal law will not preclude either the state or an individual from invoking the jurisdiction of equity whenever other facts afford a basis for the exercise of equitable jurisdiction. Where equity would otherwise have jurisdiction, the fact that the Legislature has made such conduct a crime does not oust jurisdiction to enjoin. "Criminality neither affords a basis for, nor does it oust the jurisdiction of, the court to grant an injunction." 42 Am Jur 2d, Injunctions, § 157, p 918. See Garfield Twp v. Young, 340 Mich 616; 66 NW2d 85

(1954); Dearborn Nat'l Ins Co v. Comm'r of Ins, 329 Mich 107; 44 NW2d 892 (1950); Board of Health of Grand Rapids v. Vink, 184 Mich 688; 151 NW 672 (1915); United States v. US Klans Knights of Ku Klux Klan, Inc, 194 F Supp 897 (MD Ala, 1961); State ex rel Turner v. United Buckingham Freight Lines, Inc, 211 NW2d 288 (Iowa, 1973); Chicago v. Larson, 176 NE2d 675 (Ill. App., 1961).

In Attorney General v. Peterson, 381 Mich 445, 465-66; 164 NW2d 43 (1969), the Supreme Court held:

> We believe the better rule and the trend of modern authority is that equity may enjoin the unlicensed practice of a profession. At common law, acts in violation of law constitute a public nuisance. Harm to the public is presumed to flow from the violation of a valid statute enacted to preserve public health, safety and welfare. The attorney general, action on behalf of the people, is a proper party to bring an action to abate a public nuisance or restrain unlawful acts which constitute a public nuisance. The existence of a criminal or other penalty for the practice of a profession without a license will not oust equity from jurisdiction.

We hold that the trial court did not err in exercising equity jurisdiction in this case. Defendant's conduct before injunction entered and his threatened conduct in the future supports plaintiff's claim that recourse to the criminal courts alone may not be adequate to restrain unlawful acts or threats thereof which constitute, at a minimum, a public nuisance which affects health, moral, or safety. Defendant stated under oath that he would continue to aid in suicides even if his license was revoked. Defendant's actions implicate criminal law and his words and actions amount to an advertisement for criminal and unethical conduct. Defendant has made clear that he stands ready to assist people in ending their lives. Defendant has make clear that neither the actions of the Legislature, the executive, not the judiciary will sway him from his course. We will see.

Affirmed.

/s/ William B. Murphy
/s/ Michael J. Kelly

Saad, J. (concurring).

I concur in the result of the majority opinion and write separately to express my view on this important topic.

I

Nature of the Case

We deal here with the important legal question of whether the trial court should have enjoined Dr. Kevorkian from helping others to kill themselves. Because respect for life and for the rule of law goes to the heart of our nation's traditions and the principles we live by, I believe that we must prohibit any person from placing himself above the law by helping people kill themselves. And, although the judiciary will ordinarily refrain from enjoining criminal misconduct because to do so would appear superfluous, courts must act when someone threatens to violate the rule of law by helping others to kill themselves. The courts must and should act to preserve the sanctity of life and to protect life and preserve the rule of and respect for the law.

II

Facts

I concur in the majority's recitation of the facts; however, I believe that the following facts deserve emphasis.

Significantly, in response to the unlawful conduct at issue, the Legislature passed a bill outlawing assisted suicide, 1993 PA 3, and the Governor signed the bill into law that same day. MCL 752.1027; MSA 28.547(127). The Michigan Supreme Court has since both upheld the statute against various

constitutional challenges, and reaffirmed that one who assists another to take his life violates he criminal laws of this state. People v. Kevorkian, 447 Mich 436; 527 NW2d 714 (1994). Most recently, all the parties have filed petitions for certiorari with the United States Supreme Court, which have been denied, sub nom Hobbins v. Kelly, __US__ (1995). It is against this backdrop of legal developments which reaffirmed the illegality of assisted suicide that we now affirm the decision of the trail court.

III

Issue

Should a court of general jurisdiction use its extraordinary injunctive powers to prohibit someone from helping another to kill himself where such conduct is both threatened and criminal?

IV

Analysis

Though rare, courts have used injunctions against repeated and threatened criminal conduct. 42 Am Jur 2d, Injunctions, § 157, p 917; State ex rel Turner v. United Buckingham Freight Lines, Inc, 211 NW2d 288 (Iowa, 1973); Chicago v. Larson, 176 NE2d 675 (Ill. App., 1961); United States v. US Klans Knights of Ku Klux Klan, Inc, 194 F Supp 897 (MD Ala, 1961); Garfield Twp v. Young, 340 Mich 616; 66 NW2d 85 (1954).

But why do so here? Because the sanctity of human life and the rule of law are, at one and the same time, the most cherished and vulnerable principles of our society and both are directly challenged and would be undermined by the threatened conduct if left unchecked.

On the other hand, compassion for those dying painfully and the concept of individual choice convince some citizens to support euthanasia. Combine these powerful forces with a

climate of situational ethics in a world where matters of life and death have become more decisional than natural and euthanasia to some becomes a moral imperative. However, the people of Michigan, through the Legislature, Governor and Supreme Court, have stated unambiguously that helping another to kill himself is criminal. Therefore, the issue raised by threatened violations of our laws against assisted suicide is: What is the proper response of the courts?

And, it is the answer to this question which mandates that we uphold the trial court's injunction against Dr. Kevorkian helping others to kill themselves.

The Judiciary cannot avoid its responsibility to address questions of life and death. Quill v. Koppel, 870 F. Supp 78 (SD NY, 1994); Compassion in Dying v. Washington, 49 F3d 586 (CA 9, 1995). Like it or not, these fundamental issues end up before judges who admittedly are more comfortable with and able to answer evidentiary rather than mortality issues. Yet, when faced with threatened violations of life and law, courts cannot remain adiaphorous, particularly where, as here, defendant's conduct strikes at the very heart of both. Quill, supra; Compassion in Dying, supra.

Indeed, it is the concomitant centrality and fragility of the principles of sanctity of life and respect for the law, combined with the frequency and ferocity of attacks on these principles that oblige this Court to place its equity powers squarely on the side of life and law. And this is especially true where, as here, both of these cherished traditions are threatened with one seductively insidious act. So, we affirm the trial court's order to Dr. Kevorkian to obey the law.

/s/ Henry William Saad

Judge Noonan recognized the paramount importance of the principles of the sanctity of life and respect for the law in Compassion in Dying, supra:

In the two hundred and five years of our existence no constitutional right to aid in killing oneself has ever been asserted and upheld by a court of final jurisdiction. Unless the federal judiciary is to be a floating constitutional convention, a federal court should not invent a constitutional right unknown to the past and antithetical to the defense of human life that has been a chief responsibility of our constitutional government.

## APPENDIX D

## OPINION

(State of Michigan - Circuit Court of Oakland County)
(February 5, 1991)

THE PEOPLE OF THE STATE OF MICHIGAN ex rel RICHARD THOMPSON, PROSECUTING ATTORNEY IN AND FOR THE COUNTY OF OAKLAND, plaintiff, v. JACK KEVORKIAN, defendant. 90-390963-AZ.

This matter is before the Court on the complaint for injunctive relief of Richard Thompson, Oakland County Prosecuting Attorney, on the relation of the People of the State of Michigan. The People seek to enjoin Defendant Jack Kevorkian, M.D., from implementing any device to assist people who wish to commit suicide. On June 8, 1990, after conducting a hearing, this Court issued a preliminary injunction providing that:

> . . . Defendant Kevorkian, his agents, and employees, and those in active concert or participation with him, shall be and hereby are enjoined pending final disposition of this cause from: using, employing, administering, offering, or providing any of his "suicide machines", or other similar devices, contrivances, or other modalities or drugs (including nonprescription drugs) on, or to, any person seeking to end a human life, or conducting any acts to help a patient commit suicide regardless of the modality employed.

TRIAL

A trial was held on January 4, 7 and 8, 1991. The Court heard testimony from 14 witnesses and examined 15 exhibits. Dr. Kevorkian did not take the stand at trial but his testimony from the June hearing was admitted as an exhibit.

This matter originated on June 4, 1990 when Dr. Kevorkian used a device that he designed and built (a "suicide machine") to assist Janet Adkins, a 54-year-old Oregon woman with Alzheimer's disease, in committing suicide. The suicide machine consisted of a frame holding three chemical solutions that fed into a common intravenous line which was controlled by a switch and a timer. Dr. Kevorkian has admitted that he inserted the intravenous line needle into Mrs. Adkin's arm. Dr. Kevorkian has also stated that Mrs. Adkins herself activated the switch that actually turned in the machine; however, he shook the bottles containing the chemical solutions to ensure that the flow was correct.

Dr. Kevorkian asserts that Mrs. Adkins wished to die because she had Alzheimer's disease and feared an uncertain future. He conducted a videotaped session with Mrs. Adkins and her husband discussing her decision to end her life. He agreed to assist Mrs. Adkins after a single encounter, a dinner conversation, without the benefit of taking a history, conducting and making an independent diagnosis and contrary to the advice of her primary care physician.

Dr. Kevorkian has stated that he is certified in anatomic and clinical pathology, that he has been unemployed in medicine since 1982, and that he had no special training in Alzheimer's disease, geriatric diseases or neurology. Dr. Kevorkian admitted that the use of his suicide machine is not a medically accepted and recognized procedure. Dr. Kevorkian also admitted that in the absence of an injunction preventing him, he would build another device and offer his suicide-assisting service. Moreover, if his medical license were revoked, he would build another device and use another system, but not as a doctor.

In a written statement to this Court filed August 17, 1990, in support of his self-termed crusade for death control, Dr. Kevorkian states that he wished to continue and expand the practice of a "rational policy of planned death." He contends

that "almost 50 suffering patients have pleaded with (him) to help end their suffering. . ." (Statement of Dr. Kevorkian dated August 17, 1990, p.3). Further, he states, the decision of the "need"for planned death is the sole responsibility of medical doctors. Dr. Kevorkian explains that his policy will apply solely to patients afflicted with obvious physical diseases in obvious physical distress. He then states, however: "In such cases, medical expertise or specialization becomes irrelevant. Even laymen could readily make the evaluation, and on first contact with the patient." (Statement, p.4). Dr. Kevorkian asserts that his role would be to confirm the diagnosis of a patient's personal physician and consultant specialist. He contends that his role is to "supply the means and medical supervision for patients to kill themselves." Moreover, he states, "[d]octor-assisted suicide is a one-on-one affair between doctor and suffering patient . . . (and) . . . The voluntary self-elimination of individual and mortally diseased or crippled lives taken collectively can only enhance the preservation of public health and welfare." (Emphasis in the original) (Statement, p. 11).

Physician-assisted suicide is not medically accepted practice, according to the testimony of the physicians and ethicists at the trial in this matter.

Dr. Leon Kass testified that the ethics of the medical profession prohibit activities which constitute participation in the death of a patient; the goal of medicine is to relieve suffering and there is no living beneficiary to receive the benefits of medicine in an assisted suicide. Dr. Kass also stated that Dr. Kevorkian's actions relative to Mrs. Adkins were not medically acceptable because the goal of causing death is beyond the goals of accepted medical practice in the United States. Dr. Kass noted the circumstances of Mrs. Adkin's death, namely, Dr. Kevorkian's subjective interest in the procedure, the vehicle, the location, and the nature of the interaction between doctor and suicide would threaten the existence of the medical profession

in the following ways: 1) There would be a threat to the trust reposed in the profession that the physician always acts in the best interest of the patient; 2) A physician would not be free to determine the best interest of the patient in view of the inherent danger in a subjective pronouncement that a life is unworthy of living; 3) There would be a question as to the voluntary and informed nature of a patient's consent; and 4) There can be no objective criteria for the self-determination to end a life.

Dr. Nancy Dickey testified that the American Medical Association has issued standards of ethical medical behavior which have been adopted by the Michigan State Medical Society. The AMA opposes the participation of a physician, voluntarily or involuntarily, in the termination of a patient's life by the administration of any agent or the use of any means to actively terminate a patient's life.

Dr. Arthur Caplan testified that Dr. Kevorkian's actions regarding Mrs. Adkins were not ethical because of: 1) The conflict of interest involved since Dr. Kevorkian designed, promoted and advertised the suicide machine; 2) Dr. Kevorkian's active role in implementing the device, e.g., purchasing the drugs, attaching the device to Mrs. Adkins and maneuvering the flow of the drugs; 3) Dr. Kevorkian's relationship with Mrs. Adkins (or lack thereof) vis-a-vis his determination as to her "informed" and "competent"consent; 4) The lack of imminently terminal condition; 5) Mrs. Adkin's apparent belief that her only choice was the suicide machine.

Dr. Caplan stated that he based his opinion on ethicality standards determined by the body of opinion of medical organizations, medical ethics literature, and legal tradition. He asserted that the consensus in the medical profession is to reject the moral acceptability of physician-assisted suicide. The practice of physician-assisted suicide threatens the people's trust in the integrity of the medical profession and invited the fear of abuse by physicians since there are no standards to determine

whether to end a life. Dr. Caplan asserted that physicians "do not have any special understanding in society to mediate death."

Amber Wells of the Michigan Department of Licensing and Regulation testified as to a letter received by the Department on January 24, 1990 from Dr. Kevorkian, which detailed his plan for assisted suicide. The letter (People's Exhibit 13) stated in part:

> My purpose is to inform the Department that I have begun a unique medical practice: to assist the rational suicide of patients who are suffering from imminently terminal illness, severely crippling or painful disease or deformity or trauma, and who, on their own, have decided that the quality of life for them has degenerated to intolerable levels. Candidates for the service must be alert and mentally competent, and their underlying condition must be physical (not psychiatric). The service entails more than one consultation with the patient, their close family members, and their personal physicians. The latter supply me with case summaries, including their assessment of prognosis. The suicide is accomplished in a painless, fast, and dignified way by means of a device I invented last year. At the time and place of his or her choosing he patient activates the device by touching a switch which cuts off a slow intravenous drip of saline solution and starts infusion of thiopental sodium solution. A minute later the device will infuse a solution of potassium chloride to stop the heart. The procedure will be monitored with a running electrocardio-graph to document clinical death. In every instance the local medical examiner will have been given prior notice.

Ms. Wells interviewed Dr. Kevorkian on August 6, 1990. A recording of the interview was played during the trial. In the interview, Dr. Kevorkian stated that he is not qualified to practice medicine as a general practitioner and that he would have to take refresher courses.

Dr. Kevorkian stated that the criteria he would employ in deciding to assist a person to commit suicide, include: the

patient's prognosis as derived from speaking with the patient's physician, the therapy undertaken, the patient's alternatives to suicide, the patient's family's thoughts on the choice of suicide and the firmness of the patient's own decision. He also stated that he wanted to have at least three meetings with the patient, factor and family. However, it was not possible to have these meetings with Mrs. Adkins and her family because of the geographical distance involved.

Dr. Kevorkian also referred in the interview to his desire to assist in the future patients with a whole new syndrome" in which a person in the late twenties-thirties age group does not want to live anymore and has felt this way since a very early age.

As to the Adkins case, Dr. Kevorkian stated in the interview that Mr. Adkins contacted him regarding the procedure, and that he then received and reviewed Mrs. Adkin's medical records. Dr. Kevorkian never spoke with Mrs. Adkins by telephone; he contends that she was embarrassed and reluctant to speak on the telephone because of her disease, so Dr. Kevorkian spoke only with Mr. Adkins. The only patient record he made of Mrs. Adkins was the videotaped consultation.

As to the actual use of the suicide machine on Mrs. Adkins, he stated that he had never previously used any of the drugs. He researched reference books and pharmacology books to learn what to do. He also conferred with two anesthesiologists regarding "technique." He used a large dose of the drug for Mrs. Adkins because he was unsure if the effectiveness of the procedure. Dr. Kevorkian clearly was using Mrs. Adkins for a first-time experiment of his death device.

Dr. Kevorkian stated in the interview that he would never work with a patient who would change his/her mind during the procedure and that he would know such a person just talking to him/her. If there were any problems during the procedure, he stated that he might have to break the law and finish it himself. He has no back-up procedures other than

ensuring that the device is effective and that competent people are employed.

Dr. Kevorkian asserted that if his medical license were to be suspended or revoked because of his planned practice, he would act "only as a citizen" and could employ other means to assist people who wished to commit suicide.

He spoke of the positive effects of planned death on society: the relief of the patient's suffering, the removal of the physical and psychological burden from the patient's family, and the avoidance of wasted societal resources. He stated that if the preliminary injunction were lifted, he would use a device to aid other suicides.

Dr. Murray Raskind, who treated Mrs. Adkins in the early stages of her disease, testified at trial that she could have lived and additional seven to ten years and that he doubted that she was mentally competent to make the decision that led to her suicide. He also stated that he told Dr. Kevorkian that Mrs. Adkins was not suffering terminally ill patient and this was not a "suitable candidate" for physician-assisted suicide.

Dr. Linda Biedrzycki, a board certified pathologist licensed to practice medicine in Michigan, testified at trial that, as a pathologist, she is not qualified to practice in all areas of medicine including neurology, psychiatry or the diagnosis of Alzheimer's patients. Further, a pathologist would only treat living patients in a consultive capacity.

Dr. Jacob Chason testified as a neuropathologist who has acted as a consultant on Mrs. Adkin's autopsy. He stated that Mrs. Adkin's brain contained more Alzheimer's disease plaques and tangles than all but one other brain in the more than 20,000 he has examined. He determined that the Alzheimer's disease was highly advanced in Mrs. Adkins.

Sherry Miller testified on Dr. Kevorkian's behalf that she wished to use his suicide machine because of her progressive deterioration due to multiple sclerosis. She stated that she did

not want to burden anyone and stressed that she wants the right to die and the right to have the assistance of a doctor.

Virginia and Virgil Bernero testified as to Victor Bernero's painful death due to AIDS, and praised the efforts of Dr. Kevorkian. Both stated their belief in a person's right to die.

## FINDINGS

1.) Dr. Kevorkian acted as a physician with an established physician/patient relationship. As such, this Court's opinion must be guided by and reflect the currently approved standards of medical practice, and not those standards likely to ensue in the future. Physicians practice under codes of professional conduct that are established by the American Medical Association and adopted in the by-laws of all accredited hospitals in the United Stated. It is, therefore, reasonable to take the position that physicians have a moral, ethical and professional obligation to adhere to these codes in the delivery of health care to their patients.

2.) Dr. Kevorkian is, by education and training, a pathologist who has been retired from practice since 1982. He is totally divorced from any experience in the field of internal medicine, geriatric medicine, psychiatry and neurology, all areas that would play a definitive role in the diagnosis and management of the disease afflicting the patient, Mrs. Adkins. This Court finds that Dr. Kevorkian was not professionally qualified to evaluate the physical and/or emotional status of Mrs. Adkins, and that he did indeed, carry out what in his mind was a therapeutic measure, a form of treatment that far exceeded his professional knowledge and skills.

3.) Notwithstanding Dr. Kevorkian's limitations, he made no attempt to take a comprehensive medical history, conduct a physical examination, order any laboratory tests, assess the true neurological status or obtain consultation, all requisites of acceptable medical practice. Although Dr.

Kevorkian contended that his role would be to confirm the diagnosis of the patient's perso. al physician and consulting specialist, it was, in fact, the patient who, through brief conversation, stated the diagnosis and selected the modality of treatment. Convincing evidence was submitted, in the videotaped interview conducted by Dr. Kevorkian, that Mrs. Adkins, then 54 years of age, was neither imminently terminally ill not suffering from any pain. Rather, she was coherent, responsive to verbal communication, and without significant clinically obvious physical or mental impairments; it was reported that she played tennis within days of her induced death.

The evidence surrounding Mrs. Adkin's desires is too sparse for this Court to factually find that Mrs. Adkins wanted to commit suicide. Mr. Adkins did most of the talking for his wife on the videotape. Dr. Kevorkian failed to probe Mrs. Adkin's limited responses of "wanting to get out" and "self-deliverance." At no time on the tape did Mrs. Adkins tell Dr. Kevorkian that she wanted to commit suicide or end her life, or that she wanted Dr. Kevorkian to immediately put her to death. Dr. Kevorkian appeared to be in a hurry on the tape, and exhibited little knowledge in understanding and communicating with an Alzheimer's patient. He also displayed a lack of knowledge and ability to obtain an informed consent by failing to explain the need for the procedure, the alternatives available, the risk involved, the implications of the procedure, the result if the procedure was not done and the benefits the patient would have from the procedure. The testimony indicates that Janet Adkins was afflicted by progressive, irreversible neurologic disease of unknown etiology that had advanced to the level of producing a degree of mental incompetence, but not to the degree where it prevented a reasonably acceptable quality of life that could have endured several years into the future.

4.) The affliction from which Mrs. Adkins suffered has been under intense investigation by scientists throughout the

world. What cures or controls lie upon the horizon are today unknown, but remain a distinct possibility. By inducing her death under the existing circumstances, Dr. Kevorkian denied Mrs. Adkins not only the benefits of available therapy, but he also failed to comprehensively inform her of investigation being conducted, and thereby denied her the benefit of possible future therapy that may have led to more effective therapy.

5.) As a specialist in the field of pathology, Dr. Kevorkian was obligated to meet and must be held to the standards of a reasonable pathologist practicing medicine in light of the state of that specialty's scientific knowledge existing at the time of any alleged act. Testimony confirmed that the disease from which Janet Adkins was suffering was a clinical problem and not within the province of the practice of pathology. Dr. Kevorkian's actions relative to his treatment of Mrs. Adkins were not medically acceptable, and, therefore, violated acceptable standards of medical practice. Further testimony gave credence to the opinion that current standards of medical practice specifically prohibit any activities that constitute participation in the death of a patient.

6.) In an effort to substantiate his position, Dr. Kevorkian quotes the Hippocratic Oath which states in part: "That I will exercise my art solely for the cure of my patient, and I will give no drug, perform no operation for a criminal purpose, even if solicited, far less suggest it."

## ANALYSIS

The Question before this Court is relatively narrow: Whether this Court has the jurisdiction and should exercise that jurisdiction to permanently enjoin Defendant Dr. Kevorkian from employing any device to assist another person in committing suicide. The Court answers this question in the affirmative.

The Court first notes that it has jurisdiction over this

action pursuant to Const 1963, art. 6 sec. 13 which grants circuit courts jurisdiction over all matters not prohibited by law. Further, this Court is empowered to grant relief sought by the People by virtue of its broad grant of equitable powers as provided by MCL 600.601(2).

The Court finds that injunctive relief is appropriate in this matter. Injunctive relief is proper where a plaintiff has shown that the defendant's actions would cause plaintiff irreparable harm and that plaintiff has no adequate remedy at law. Treasurer of Committee to Elect Gerald D. Lostracco v. Fox, 150 Mich. App. 617 (1986). Although equity jurisdiction is generally not available to enjoin criminal violations, a court may exercise its equitable powers to abate public nuisances affecting health, morals, or safety, or to protect a public property right or interest. State ex rel Wayne Prosecuting Attorney v. Martin, 314 Mich 317 (1946), Township of Kalamazoo v. Lee, 228 Mich 117 (1924). "Harm to the public is presumed to flow from the violation of a valid statute enacted to preserve public health, safety and welfare." Attorney General ex rel Optometry Board of Examiners v. Peterson, 381 Mich. 445, 465 (1969).

Dr. Kevorkian's planned course of conduct implicates the criminal law, specifically, the provisions against homicide, MCL 750.316: Dr. Kevorkian has stated that he would "finish the job" if his device failed; this crosses any line that exists between assisting a suicide and committing a murder. Dr. Kevorkian's planned course of conduct also implicates the criminal provisions against the unlawful dispensing of controlled substances for other than legitimate and professionally recognized therapeutic or scientific purposes or outside the scope of the practitioner's practice. MCL 333.7401, MCL 333.7405, MCL 333.7406. The Court notes that MCL 333.7511 empowers the Court to enjoin a violation of the provisions against unlawful dispensing of controlled substances. The jurisdiction of the Court is not destroyed by the fact that a

criminal act will be restrained. Township of Garfield v. Young, 340 Mich 616, 619-620 (1954), Township pf Warren v. Raymond, 291 Mich 426, 428 (1939).

Dr. Kevorkian's planned course of conduct implicates the provisions of the Michigan Public Health Code. MCL 333.1101 et seq. The Public Health Code shall be liberally construed for the protection of the health, safety and welfare of the people, MCL 333.1111(2). Dr. Kevorkian's planned course of conduct relates to medical licensure law, Equity may enjoin the unlawful practice of a profession. The dispensing of drugs is an activity within the statutory definition of the practice of medicine. Attorney General v. Recorder's Court Judge, (People v. Bouee) 92 Mich App 42 (1979). MCL 333.16291 provides that a circuit court may enjoin a person from a violation of a statute or rule promulgated under the medical licensing statute, MCL 333. 17001 et seq. Dr. Kevorkian plans to take active steps to end the life of another person with drugs and/or a device. He admits accepting patients outside his specialty of pathology even in light of his admission that he is not qualified to practice as a general practitioner. Dr. Kevorkian's conduct must also be viewed in light of the research provisions of the Public Health Code, MCL 333.2601 et seq. Dr. Kevorkian's threatened actions conflict with the public's interest in protection and promotion of the health of individuals and the public as a whole. Finally, the Public Health Code is intended to be construed as consistent with applicable federal law, MCL 333.1111(1). The Court notes that the purpose of the Federal Food, Drug, and Cosmetic Act, 21 USCS 301 et seq, which provides for regulation of drugs and devices, is to protect public health.

Finally, Dr. Kevorkian's conduct implicates tort law. Youngberg v. Romeo, 457 US 307, 321, 102 S.Ct. 2452, 73 L.Ed.2d 28 (1982).

A number of cases have addressed the right of an

individual to refuse medical intervention or treatment. The United States Supreme Court has held that a competent person has a constitutionally protected liberty interest in refusing unwanted medical treatment. Washington v. Harper, __ U.S. __, 110 S.Ct. 1028, 108 L.Ed2d 178 (1990). However, the determination "that a person has a 'liberty interest' under the Due Process Clause does not end the inquiry, 'whether respondent's constitutional rights have been violated must be determined by balancing his liberty interest against the relevant State interests against the relevant State interest.' (Citations omitted.)" Cruzan v. Director, Missouri Dept of Health, 497 U.S. __, 110 S.Ct. __, 111 L.Ed2d 224 (1990).

The State has a great interest in the protection and preservation of human life. The State demonstrates this commitment to life by treating homicide as serious crime. Id., p. 243. Although Dr. Kevorkian argues essentially that the "self-elimination of . . . mortally diseased or crippled lives taken collectively can only enhance the preservation of public health and welfare. . .", the State may properly decline to make judgments about the "quality" of life that a particular individual may enjoy, and simply assert an unqualified interest in the preservation of human life to be weighed against the constitutionally protected interests of the individual. Id, p. 244.

The State's interest in protecting innocent third parties arises in situations where a competent adult refuses life-saving or life-prolonging treatment; even in this type of situation, the State has a valid interest in the protection of an individual's minor children. "When the patient's exercise of his free choice could adversely and directly affect the health, safety, or security of others, the patient's right of self-determination must frequently give way." In the Matter if Conroy, 98 NJ 321; 486 A2d 1209, 1225 (1985).

The State has compelling interest in the prevention of suicide. Suicide is precisely the action that Dr. Kevorkian seeks

to protect. There is no constitutionally recognized right to commit suicide. In fact, the power of the State to prohibit suicide is unquestionable. Cruzan, supra, p. 255.

The final State interest which is implicated is the maintenance of the ethical integrity of the medical profession. There is substantial evidence on the record in this case as to the unacceptability of Dr. Kevorkian's proposed practice. Prevailing medical ethical practice rejects physician assisted suicide; the goal of causing death is contrary to the goal of medicine to promote health and life. Doctors testified as to the medical profession in view of the potential for error or abuse and the lack of capability of a precise measurement of pain and incurability, consent and voluntariness. The Court finds that the proposed practice of physician-assisted suicide is outside of the realm of acceptable medical practice and threatens the ethical integrity of the medical profession.

As to the asserted individual rights, Dr. Kevorkian seek to expand these rights of self-determination and privacy to include the right to assisted death. As noted by the Supreme Court in Cruzan, the liberty interest in refusing medical treatment flows from decisions involving the State's invasions into the body. Cruzan, p. 241. In the present case, however, there is not State-threatened invasion of the body. The procedure contemplated in this case is active consensual death, assisted by another person. The Court finds that the State's interest greatly outweigh an individual's interests in this situation, and notes a critical difference between the present situation and prior cases which have upheld the individual's rights of privacy and self-determination: The fact that Dr. Kevorkian is the party to this case and to the proposed procedure evidences that the asserted individual rights at stake are not the rights of privacy and self-determination. The terms "privacy" and "self-determination" belie the participation of another individual; yet this is precisely what Dr. Kevorkian proposes --

the right to assist a suicide. The rights of privacy and self-determination do not encompass the right to direct another person to kill, or the right of a third person to participate in the killing. Patients can not confer a right upon a doctor to assist a suicide. Patients can not dictate to a physician how to practice medicine.

Therefore, the Court concludes that Dr. Kevorkian should be permanently enjoined from employing any device to assist a person in committing suicide. The Court finds from the evidence submitted by Defendant, (his statement and the interview with the Department of Licensing and Regulation), and by the People, (medical and ethical opinion, Dr. Raskind's testimony) that Defendant should not be entrusted to make the judgment of another individual's worth or "self-determination" by his own nebulous, conflicting standards and procedures. In the present case, and under the present facts, the Court finds that the State interests far outweigh Dr. Kevorkian's desire to assist a person to commit suicide or any individual's interest in exhorting another person to assist in that individual's suicide.

## CONCLUSION

If we accept the premise that life is mankind's most precious asset, those charged with the responsibility for its maintenance are obliged to exercise prudent judgment and beneficent caution to ensure its preservation. This is not to infer that situations do not exist under which life exceeds the level of physical and/or emotional tolerance where, in fact, the alternative to life serves the best interest of a patient.

The opinion expressed in this case is not to be interpreted as having any impact upon the right-to-die issue as it related to the suffering of the terminally ill, patients in prolonged irreversible comas, and those afflicted with incurable disease accompanied by intractable pain and/or severe emotional anguish. There is reason to condone dying with dignity, but it

mandates a controlled environment that can be properly and professionally monitored by competent persons and in a manner that is acceptable to society. The need for the medical profession and the State legislature to deal realistically with this critical issue is society's challenge.

The circumstances relative to the treatment of Janet Adkins by Dr. Jack Kevorkian do not fall within the above-stated category. Rather, this concerns a physician who, under the scope of medical practice and with an established physician-patient relationship, actively participated in the intentional death of a patient. As a physician, Dr. Kevorkian was morally, ethically, professionally and legally obligated to adhere to the current standards of medical practice as approved by the medical profession, accepting, of course, the fact that these standards are not static and are subject to change.

Testimony at the hearing elicited several important considerations:

1. Dr. Kevorkian ism by education, a pathologist who has been retired from practice for a period of eight years. He is, and has been, totally divorced from any education or experience in the fields of internal medicine, geriatrics, psychiatry, neurology, and he has not had any practical experience with dealing with a patient on the clinical level. Expert testimony verified the fact that pathologists are not qualified to practice clinical medicine in the above-stated areas, and this Court finds that Dr. Kevorkian was not qualified to evaluate the physical or emotional status of the patient and that he engaged in an activity that far exceeded his professional competence.

2. Dr. Kevorkian's pre-treatment contact with the patient was limited to one appointment, and a videotaped session discussing her decision. There is no evidence that he ever took a medical history or conducted any type of physical or laboratory examinations that could lead to an independent diagnosis. He denied Janet Adkins the benefit of consultation, and a phone call

to the patient's primary care physician received the response that his contemplated procedure was ill-advised, and his testimony indicated that she could have lived seven to ten years with a reasonable quality of life. It was, in fact, the patient, perhaps fearing the consequence of the future, who dictated the treatment modality, and Dr. Kevorkian simply obliged.

3. The videotaped interview clearly demonstrated that Mrs. Adkins, then 54 years of age, was neither imminently terminally ill nor suffering pain. She was coherent and responsive to questions, and without significant evidence of physical or mental impairment. She had played tennis within days of her induced death. Testimony was provided to the effect that, notwithstanding her obvious well-being, it is probable that she did have sufficient mental impairment to preclude the capacity to make the decision she made. Mrs. Adkin's response were brief with comments such as she "wanted out" and wished to be "self-delivered." Dr. Kevorkian failed to thoroughly probe the several rather ambiguous expressions. She never specifically asked that Dr. Kevorkian should put her to death, or that she wanted to die immediately. Neither did he take the time to provide comprehensive information relative to the significance of her decision, possible alternatives like psychiatric and social counseling, and investigation that was being carried out throughout the world that could lead to the cure or control of the disease. In addition, he did not tell the patient that he had never before used the "machine", and its effectiveness was yet to be determined. The interview conveys the impression that Dr. Kevorkian was rather anxious to try his invention that he had advertised, and Janet Adkins appeared as a likely candidate.

4. Testimony by experts provided unequivocal evidence that Dr. Kevorkian's actions were contrary to current standards of medical practice, and that the standards issued by the American Medical Association, adopted by the Michigan Medical Society, specifically oppose the active participation of

a physician in assisting a patient in the process of ending life.

The multiple eccentric, unorthodox, and controversial remarks made by Dr. Kevorkian provide convincing evidence that he has a flare for flamboyancy, a propensity for media exposure, and seeks recognition through bizarre behavior. His arrogance coupled with unabashed disregard and disrespect for his profession and its current professional and ethical standards reveal that his real goal is self-service rather than patient service. The reasons why Dr. Kevorkian has been unable to find employment in any accredited hospital are made patently clear to the Court. If allowed to continue with his death-delivering device he could well become an onerous burden, rather than a benevolent boon, to society.

In summary, Dr. Kevorkian, as a physician practicing medicine, has the obligation to abide by the standards of care in the light of current knowledge and skills, including the codes of conduct, that have been prescribed and endorsed by the medical profession. Testimony provided before this Court has clearly demonstrated that he flagrantly violated these standards and codes.

Dr. Kevorkian envisions himself as a charitable maverick, destined to revolutionize the practice of medicine. His peers look upon him as a menace that threatens the existence of the medical profession and those creeds that have endured since the time of Hippocrates. This Court finds it difficult to believe that the physicians of he past 2000 years have been blind to need, and only Dr. Kevorkian has the vision to lead them out of the darkness. At the present time, patient self-determination does not encompass self-extermination effectuated by a physician. Patient can not confer a right upon a doctor to assist a suicide. Patients can not dictate to a physician how to practice medicine.

As science, technology and the art of medicine advance, changes may be in order. While this Court and the current law

are not adverse to planned death, any such action must be under the proper circumstances and conducted by persons of competence and integrity acting with convincing sincerity of purpose within a legal, moral and ethical framework.

The temporary injunction issued in this cause shall be made permanent.

IT IS SO ORDERED.

Alice L. Gilbert
Circuit Judge

February 5, 1991

## APPENDIX E

## RELEVANT PAGES FROM APPLICATION FOR LEAVE TO APPEAL

(Michigan Supreme Court)
(July 6, 1995)

**III. The Court of Appeals Erred in Upholding the Injunction Against Defendant When it Clearly Violated Defendant's First Amendment Right to Free Speech.**

The First Amendment to the Constitution of the United States expressly prohibit laws which would abridge the freedom of speech. The same fundamental principles contained in the First Amendment are protected from abridgment by any action by the State of Michigan by virtue of the due process clause of the Fourteenth Amendment. Book Tower Garage v. Local No. 415, Inter. Union, United Auto. Workers of America, 295 Mich 580, 295 N.W. 320 (1941). "State action" includes a judicial act such as an injunction. For example, the courts have held that the granting of injunctive relief against personal defamation would infringe the constitutionally guaranteed freedoms of speech and press by setting up what would be, at least potentially, a system of judicial censorship. Willis v. O'Connell, 231 F. Supp. 1004 (DC Ala); Konigsberg v. Time, Inc., 288 F. Supp. 989 (SD NY); Judson v. Surhost, 78 Ohio St. 2446, 85 NE 1127.

Freedom of speech is crucial to "assure the unfettered interchange of ideas for the cringing about of political and social changes desired by the people. It is only through free debate and free exchange of ideas that the government remains responsive to the will of the people and peaceful change is effected. The right to speak freely and to promote diversity of ideas and programs is therefore one of the chief distinctions that sets the

United States apart from totalitarian regimes." 16A Am Jur 2d Constitutional Law, pp.316-317. In the instant case, the trial court judge, and the Court of Appeals have attempted to deny Dr. Kevorkian his constitutionally protected right to free speech, and to exchange ideas to promote peaceful change. This issue was created by Circuit Court Judge Gilbert's injunction and opinion. Defendant/Appellant raised the issue in the Court of Appeals, but that court failed to address the issue.

The permanent injunction issued by Circuit Court Judge Alice Gilbert contains broad sweeping language that would interfere with Dr. Kevorkian's right to discuss suicide and the means to commit suicide with others. The permanent injunction specifically enjoins Dr. Kevorkian from "offering" any of his "suicide machines" or other assistance to anyone "seeking to end a human life" and from "conducting **any acts** to help a patient commit suicide regardless of the modality employed." This injunction prohibits Dr. Kevorkian from making statements that others may make without impunity regarding suicide. This is a clear violation of Dr. Kevorkian's First Amendment rights and for this reason alone the permanent injunction should be struck down by this Honorable Court.

This Court may recall a story of a few years ago where a student, through researching documents within the public domain, compiled blueprints for the construction of a homemade nuclear device. The blueprints were eventually published in a journal. Even though the publication of such plans posed a potentially cataclysmic threat to the general public, the publication was sheltered by the Freedom of the Press and the Freedom of Speech. Certainly, Dr. Kevorkian's device and his counseling individual patients presents a threat of no comparison to an atomic bomb. Defendant, too, should be sheltered by the Constitutional guarantees afforded to all citizens of the United States.

## APPENDIX F

## CONSTITUTIONAL PROVISIONS INVOLVED

**Amendment I**

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

**Amendment V**

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; not shall private property be taken for public use, without just compensation.

**Amendment IX**

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

**Amendment XIV § 1**

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.